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1 P R O C E E D I N G S

2 THE COURT: We are here on Case Number
3 12-012447, Terry Gene Bollea vs. Gawker Media and
4 others. Christina Ramirez here representing the
5 plaintiff. Charles Harder here representing the
6 plaintiff, who as been ordered as pro hoc to
7 appear today. Greg Thomas here representing
8 Gawker and Rachel Fugate here representing
9 Gawker.

10 We're here today for plaintiff's Motion for
11 Temporary Injunction. I have reviewed both the
12 plaintiff's and the defendant's responses that
13 had been filed for this hearing.

14 First off, I would like to say one initial
15 thing, and that is professionalism, civility,
16 integrity. Anything less will not be tolerated.
17 I would like to remind the parties that when they
18 file pleadings, they are lawyers first. They are
19 officers of the Court first. You write pleadings
20 for legal proceedings, not for tabloid or
21 sensational effect.

22 So, please, the next time any future filings
23 that are in this court file, please keep that in
24 mind. I think some of the language that was
25 used, especially in the response, is offensive.

1 I think that it is unnecessary, that it is more
2 written for sensational issues. I will remind
3 you all that you are professionals and lawyers
4 first above anything else. So please keep that
5 in mind in the future in these kinds of filings.

6 All right. So, Mr. Harder, are you making
7 the argument?

8 MR. HARDER: I would like to, Your Honor.

9 MR. THOMAS: Go ahead.

10 THE COURT: Thank you.

11 MR. HARDER: Your Honor, I'm going to try to
12 avoid repeating anything from the moving papers
13 because I assume you've read them and you don't
14 want to hear it again. I have read the response.
15 I was in route in an airport, and I read it on my
16 iPhone, but I got a sense of it.

17 I did want to address the issue of the
18 collateral estoppel argument first. There are
19 several cases that say that a ruling on a
20 preliminary injunction is not collateral estoppel
21 because it is not a ruling on the merits of the
22 case, and it does not stop a second hearing on a
23 second motion for preliminary injunction.

24 I can -- I would cite to the Abbott
25 Laboratories case, 473 F.3d 1196 from the Federal

1 Circuit, 2007, which says that, "Rulings on
2 earlier preliminary injunction motions do not
3 have collateral estoppel effect in subsequent
4 preliminary injunction proceedings.

5 In the 11th Circuit controlling here in
6 Florida, there's a case called David Vincent,
7 Inc. vs. Broward County, 200 F.3d 1325, 11th
8 Circuit, 2000. In that case, the Court held that
9 findings made on a prior motion for preliminary
10 injunction proceeding were not binding in
11 subsequent proceedings and do not have collateral
12 estoppel and res judicata effect.

13 I'm sure that there are lots more cases out
14 there. I just saw the opposition yesterday. So
15 we could provide additional cases.

16 I think it's pretty clear that the ruling
17 that was in the Federal court was not on the
18 merits. We filed a temporary restraining order
19 immediately after we had been retained in the
20 case when this sex tape video was on the
21 internet. And we immediately filed because we
22 felt it was an emergency, and we wanted to stop
23 the spread of that tape. We wanted to put an end
24 to it right away.

25 We filed initial papers. We expected that

1 we would be able to file subsequent papers. We
2 were denied leave to file additional papers which
3 had a lot more authority.

4 And so it was a hearing that took place very
5 quickly, and I know that there were other
6 requests made that were related to that, but that
7 was the only hearing that was ever -- that has
8 ever taken place on those issues.

9 So we believe that the Federal court did a
10 rush job on that preliminary injunction motion
11 and didn't really give it the full consideration
12 with all of the cases that we were prepared to
13 put before the Court. We also think that the
14 Court got it wrong, and we explained to some
15 extent why we think that. I'm not going to go
16 into that because it's in our papers.

17 I do want to point out to the Court, Your
18 Honor, though, because there is this issue of
19 prior restraint of free speech. I think that's
20 one of the main arguments that the defendants are
21 relying upon. They are alleging that what we're
22 trying to do is enjoin prior restraint of free
23 speech, that this is somehow protected
24 constitutional speech. And it is not, Your
25 Honor. The speech that is at issue, which is the

1 sex tape, is not constitutional protected speech.

2 There is a case that we came across when we
3 were doing some research on the opposition. We
4 came across it yesterday. It happens to be from
5 the California Supreme Court, but it cites
6 heavily to the United States Supreme Court. That
7 case is called Aguilar vs. Avis Rent-A-Car
8 System, Inc. The citation is 21 Cal.4th 121.
9 It's from 1999.

10 And the -- I'm not going to get into the
11 facts too much, but there was an employee at Avis
12 Rent-A-Car who was being subjected to racial
13 epithet. And the employee -- his co-worker who
14 was subjecting him to these, wouldn't stop and
15 Avis wouldn't put a stop to it. So he filed a
16 lawsuit and he sought an injunction to stop this
17 co-worker from using racial epithets towards him.

18 The argument from the defense was that this
19 was an attempt at prior restraint of free speech.
20 It went all the way up to the California Supreme
21 Court. The California Supreme Court enjoined
22 this conduct and said it's not a prior restraint
23 because it's not constitutionally protected. And
24 the Court even went into a whole list of the
25 types of conduct and types of speech that's not

1 constitutionally protected. They had quite a
2 list in the case, and there is additional case
3 law, which even adds to that list.

4 Unlawful conduct is not constitutionally
5 protected. The Aguilar case has soliciting a
6 bribe. That's a crime. You can't protect speech
7 that's like that. Perjury is another example.
8 Making a terrorist threat is another example. In
9 other cases one example is child pornography.
10 That's not constitutionally protected. You can
11 enjoin that in heartbeat. No one is going to say
12 you can't.

13 Well, that's somewhat similar to what we
14 have here, which is a violation of the video
15 voyeurism law in Florida where somebody is taped
16 without their knowledge, without their
17 permission, in a state of undress. You can't
18 tape them. It's illegal. And you can't post it.
19 That's illegal. Illegal conduct. It's
20 criminally illegal, not just civilly illegal.
21 You can enjoin conduct that's like that. It
22 doesn't get constitutional protection.

23 And the Supreme Court of California has a
24 great quote here. It says, "The State may
25 penalize threats, even those consisting of pure

1 speech. The goal of the First Amendment is to
2 protect expression that engages in some fashion
3 in public dialogue, that is communication in
4 which the participants seek to persuade or are
5 persuaded, communication which is about changing
6 or maintaining beliefs, or taking or refusing to
7 take action on the basis of one's beliefs."

8 The Court even goes into slander and
9 intentional infliction of emotional distress.
10 And it says to -- as to all of this whole list of
11 types of speech, "Types of speech that produce
12 special harms distinct from their communicative
13 aspect, such practices are entitled to no
14 constitutional protection."

15 And the Court concludes, "The foregoing high
16 court decision" -- it's referring to several U.S.
17 Supreme Court decisions -- "recognize that once a
18 Court has found the specific pattern of conduct
19 is unlawful, an injunction order prohibiting the
20 repetition, perpetuation, or continuation of that
21 practice is not a prohibited prior restraint of
22 speech."

23 And here, Your Honor, we have a situation,
24 as you are aware, of one other area that's not
25 protected is copyright and trademark

1 infringements. Courts are all the time enjoining
2 copyright infringements and trademark
3 infringements, particularly in California where
4 I'm from, where somebody will post either a TV
5 show or a movie or excerpts from it and the owner
6 of that will say, wait a second, you have to pay
7 for that. You have to get a license from me. I
8 get money when I put that on TV or I put that on
9 the internet. Courts enjoin that all the time.
10 Well, that's beyond prior restraint. That's not
11 constitutionally protected.

12 There is also the case that we cited,
13 Michaels -- the first Michaels case, Bret
14 Michaels, where it involved a celebrity sex tape.
15 The Court enjoined it. The Court said just
16 because you're a celebrity doesn't mean you gave
17 up your rights of privacy. In some ways you do,
18 but not in all ways, not when you're behind
19 closed doors in a bedroom or another private
20 place.

21 And in preparing for this, Your Honor, I
22 went on the internet, and I just looked up video
23 voyeurism in Florida just to see what was --
24 what's the whole point of the video voyeurism
25 law. There were some articles about some of the

1 recent prosecutions, and one was a fellow named
2 Michael Drey, D-R-E-Y. Last year the article
3 came out in the Orlando Sentinel in September of
4 last year.

5 This was fellow who was an employee at a
6 Target store. He set up allegedly -- I guess I
7 have to say allegedly. He set up two cameras in
8 the changing rooms, filmed what was going on in
9 the changing rooms.

10 And one of the victims, who was 26 years
11 old, was mortified that she had changed into a
12 bikini, had no idea that she was being filmed.
13 And this individual, Michael Drey, was
14 prosecuted. He was facing a five-year prison
15 sentence, according to the article. I don't know
16 whatever happened to it.

17 But it's -- it's -- the courts look at the
18 balancing of the public interests. And the
19 balancing of the public interests on the one hand
20 is the right to be -- have privacy in a private
21 place. And everybody has that right. Everybody
22 has that expectation, and they should if we're
23 going to be a civilized society. You just can't
24 burst in anywhere or surreptitiously video
25 someone when you don't have their permission.

1 It's a very substantial interest.

2 And the Michaels 1 case talks about the
3 substantial interest that people have to privacy
4 in their private homes and private places.

5 On the other hand, the counter balance is
6 the right of people to watch videos that they are
7 not supposed to watch. Well, there is no right.
8 There is no such right to watch a video of
9 somebody in a private bedroom naked or having sex
10 or in a changing stall when they are putting on a
11 bikini. There is no such right.

12 Now, the Gawker defendants try to tie in a
13 newsworthiness to this. They say, well, he's a
14 celebrity, so therefore, we can talk about it.
15 Well, the Michaels 1 decision says, no, you
16 can't. You can't -- you can't just tie in a
17 newsworthy aspect to something that is a
18 violation of someone's rights.

19 Now, the interesting thing is that in
20 Michaels, it wasn't a violation of the criminal
21 statute of video voyeurism. First it was in
22 California, and here we're in Florida where there
23 is such a statute. And, second, Pamela Anderson
24 and Bret Michaels created the film on their own.
25 The violation was that they created it for their

1 personal usage and not for public usage.

2 Here we have a different situation where Mr.
3 Bollea was filmed without his knowledge and
4 without his permission in a private place. That
5 was a violation. And it is equally a violation
6 to post that. So it's even more of a violation
7 of his privacy rights and of the law here in
8 Florida.

9 Also, Florida has a two-person -- a statute
10 that requires two people to consent to the taping
11 and recording of someone. That was violated, as
12 well.

13 There is a famous case that involves a
14 celebrity outside of all of these cases that
15 we've cited. That's of Erin Andrews. She was an
16 ESPN reporter who was in a hotel room. A person
17 rented the hotel room next to her and somehow had
18 peep holes into her room, and he videoed her in
19 her hotel room.

20 She was mortified, and she suffered extreme
21 emotional distress. It was a huge news story.
22 No one doubts that that was a big news story,
23 that there was a newsworthy aspect to that
24 incident.

25 But that doesn't mean you get -- a news

1 organization gets to post video of Erin Andrews
2 naked in a hotel room. It's not necessary to
3 post that to tell the news story. You can still
4 tell the five Ws of the story, the who, what,
5 where, when, why, how, without posting the actual
6 content.

7 And here, Gawker defendants stepped over the
8 line. No one is disputing that they had a right
9 to write a legitimate news story. Even to have a
10 picture of Terry Bollea next to the news story
11 saying, this is the guy that we're talking about.
12 You know him as Hulk Hogan.

13 And then talking about he had an
14 extramarital affair. He was in a bedroom. It
15 was not his bedroom. It was not his wife, et
16 cetera. A tape was made allegedly. Someone is
17 trying to shop that tape. You can say all of
18 that in words. You don't have to post the
19 content.

20 Can you imagine a world where every time
21 someone was surreptitiously videoed, and if there
22 was some news aspect of it, they got to post the
23 content? Erin Andrews or the situation with
24 Michael Drey at the Target store? Or news flash,
25 ladies and gentlemen, there is a Peeping Tom in

1 your neighborhood. This is how he operates.
2 Here is some video that he took. That's crossing
3 the line.

4 They crossed the line. We're asking for an
5 injunction to stop that. The Courts say you're
6 entitled to an injunction, a mandatory
7 injunction. Yes, they posted it up. We're
8 entitled to an injunction to take it down.

9 The case that I was telling you about
10 earlier, Aguilar, the Supreme Court of California
11 said you're entitled to a mandatory injunction
12 against this co-worker who was using racial
13 epithets because his speech is not
14 constitutionally protected and you can stop him.

15 I think you need to look no further than the
16 Gawker story itself where they admit this isn't
17 about telling the news. They say it's not safe
18 for work. They say it reduces us all to voyeurs
19 and deviants. They say you're not supposed to
20 watch it.

21 Well, they are not describing the front page
22 of the New York Times. The New York Times is
23 something -- is not something you're not supposed
24 to watch. It's not something that reduces you to
25 a voyeur or a deviant if you look at it. It's

1 perfectly safe for work.

2 If it was a legitimate news content -- I'm
3 talking about the sex tape. If that was
4 legitimate, they wouldn't be saying you're not
5 supposed to watch it.

6 I think it's also telling that no other news
7 organizations in the world have this sex tape up.
8 There was one other instance where following
9 their lead, they posted the same content. And in
10 a Cease & Desist letter, it was taken down
11 immediately.

12 No other news organization has posted this
13 up. Hundreds, if not thousands, have written
14 about the story of the Hulk Hogan sex tape. It
15 became big news, but nobody has posted the
16 contents.

17 I reserve for further. Thank you, Your
18 Honor.

19 THE COURT: All right. Mr. Thomas.

20 MR. THOMAS: Your Honor, can I approach?

21 THE COURT: Yes.

22 MR. THOMAS: Your Honor, there's a chart we
23 would like to talk to you about. Your Honor, I
24 would like for you to think for a second about
25 the reverse of what happened in this case. Let's

1 assume Mr. Bollea comes to you firsthand and he
2 presents these arguments. Your Honor spends a
3 consider amount of judicial labor on those
4 arguments.

5 And this is the same thing, Your Honor.
6 Mr. Hogan chose the court of first resort.
7 Didn't come to this court first. He came to the
8 United States District Court in Tampa, Florida
9 and filed this claim. He chose it. We didn't.

10 He files a Motion for Temporary Restraining
11 Order and Preliminary Injunction. The Court,
12 seven days later, denies the temporary
13 restraining order, but says you're going to have
14 your day in court. You're going to have a
15 hearing. You take as much time as you want.

16 I argued. Ms. Ramirez's partner,
17 Mr. Turkel, argued. We were there for an hour
18 and a half. There is a lengthy transcript of
19 that hearing in Tampa, Your Honor.

20 The Judge -- the same day we had that
21 hearing, they file an Amended Complaint that adds
22 a copyright claim. Copyright, as Mr. Harder
23 says, is exactly right. Copyright gives you an
24 entitlement to an injunction if you satisfy the
25 other criteria.

1 So Judge Whittemore after that hearing,
2 three weeks, issues -- denies the preliminary
3 injunction. Lengthy order. We have a copy of it
4 right here for Your Honor.

5 THE COURT: I have a copy. Thank you. I
6 have two copies, in fact, that were attached
7 to -- I believe it was Ms. Fugate's declaration,
8 and there was a copy of the Order dated
9 November 14, 2012. There is also an Order that
10 is dated December 21, 2012.

11 MR. THOMAS: Exactly, Your Honor. That
12 first Order is the Order -- the key Order about
13 the preliminary injunction. The Court spends a
14 considerable amount of time analyzing the four
15 criteria, talking about prior restraint, makes
16 the determination that it is a prior restraint to
17 enjoin this, looks at the four criteria that are
18 necessary for an injunction and makes a ruling.

19 But then the Court goes on -- well, the next
20 day, Your Honor, the 15th, they appeal to the
21 11th Circuit Court of Appeals. They are on their
22 way to the 11th Circuit to the get relief there.

23 And they come back to Judge Whittemore and
24 they say, "You need to stay this while we
25 consider the 11th Circuit Order." The Judge

1 looks at that and he denies it.

2 They file a motion, the same sort of motion,
3 in the 11th Circuit, and the 11th Circuit never
4 gets there. The Court then -- they file a
5 next -- a second Motion for Preliminary
6 Injunction, Your Honor, on the copyright claim.

7 Then, again, Judge Whittemore denotes --
8 devotes judicial labor to that claim and, again,
9 denies the preliminary injunction.

10 So they've had three bites at the apple;
11 temporary restraining order, preliminary
12 injunction on the first claim, and preliminary
13 injunction on the second claim. So to say that
14 the Court in Tampa did not devote sufficient
15 labor to this matter, Your Honor, that's what
16 Judges like Your Honor do. You consider the
17 matter and you rule. Here, Judge Whittemore did
18 exactly that. He made a ruling.

19 At some point they decide to abandon that
20 claim. They dismiss in trial court exactly the
21 same claims Your Honor is presented with today;
22 intrusion, private facts, video voyeurism, all
23 the same claims.

24 And I would ask Mr. Harder to tell you on
25 rebuttal what's changed since then. You know,

1 you can have a second injunction if the facts and
2 circumstances have changed.

3 Your Honor, the collateral estoppel rule is
4 clear. You can't form shop. That's exactly
5 what's happening here. Considerable judicial
6 labor there followed by decisions on the merits.

7 Your Honor, if we look at the -- what the --
8 what the standard is adopted by Florida and
9 Federal courts, if it's a Federal decision, the
10 Federal rules apply, will estoppel apply?
11 Florida courts agree with that.

12 The criteria are the issue the stake is
13 identical to the one involved in the prior
14 proceeding. The issues are identical, Your
15 Honor. The Complaint doesn't really change
16 between State court and Federal court.

17 The issue was actually litigated in a prior
18 proceeding. Not only litigated, but we have a
19 decision. We have adjudication on the merits.

20 The determination of the issue in prior
21 litigation had a critical and necessary part of
22 the judgment in the first action. That's exactly
23 what happened here. Judge Whittemore looked at
24 it and made a decision.

25 The party against whom the collateral

1 estoppel is asserted had a full and fair
2 opportunity for a hearing. Your Honor, fully
3 briefed, fully argued. A decision made by Judge
4 Whittemore.

5 Your Honor, if we look at the merits, and we
6 really can look to what Judge Whittemore said
7 about prior restraints, since 1789, we've had a
8 non-English interpretation of the way the speech
9 works. If I said something in England, I would
10 be stopped and not allowed to proceed and then
11 we'd have a trial.

12 In the United States, it's just the reverse.
13 It's publish first, punish later. That's the
14 rule about speech. We're not saying that Mr.
15 Bollea may at some time in a trial be able to
16 recover damages for any loss that he suffered.
17 And we're not saying that at a subsequent point
18 Your Honor can't enjoin it, but not at this
19 status of the proceedings, Your Honor.

20 Since 1789, we've had a Constitution that
21 honors speech. And I'm the last person here,
22 Your Honor, to tell you that this is the speech
23 of the highest quality or tenor, but the cases
24 seem to say Your Honor can't make that judgment.
25 You can't --

1 THE COURT: Let me ask you this. I'm sorry
2 for interrupting, but directly on that point.
3 This is the part that was irritating to me in the
4 lawyers' pleading, where they are describing
5 comments that are made allegedly during this
6 tape.

7 So is that the speech that you are trying to
8 protect? The speech that was made during the
9 scope of this videotape between these two
10 consenting adults having sex in a private setting
11 with allegedly no notice to the plaintiff? I'm
12 not sure what speech you're trying to protect.

13 MR. THOMAS: Your Honor, I'm trying to
14 protect multiple parts of speech. The first part
15 is the printed version of the story. This is not
16 a sex tape by itself, Your Honor. There is a
17 printed version like in the Michaels 2 case and a
18 sex tape that goes with it. It's not a sex tape
19 alone. Yes, Your Honor, I'm trying to protect
20 that speech. I'm also trying to protect the
21 speech that's there.

22 THE COURT: How does that butt up against
23 the Florida Constitution, Article I, Section 23,
24 a right to privacy?

25 MR. THOMAS: Well, Your Honor, I think

1 Federalism would mandate that Article I, Section
2 4 of the Florida Constitution is equally
3 significant. Your Honor, we're talking about the
4 First Amendment and Article I, Section 4.

5 THE COURT: I'm thinking this injunction is
6 only about the tape.

7 MR. THOMAS: Yes, Your Honor. I understand
8 that. But I also think, Your Honor, when we
9 think of the history of the First Amendment, we
10 think of the Pentagon papers, maybe because I'm a
11 First Amendment lawyer.

12 There a top secret document that was clearly
13 stolen that could have injured men in war in
14 Vietnam was considered by the United States
15 Supreme Court. And they said we're not going to
16 stop its publication. The analogy perhaps is not
17 appropriate.

18 THE COURT: It doesn't even have any -- it's
19 apples and oranges, worse than that actually.

20 MR. THOMAS: Well, Your Honor, I don't think
21 I'm out of order when I say speech is speech.
22 Your Honor is not permitted to make an editorial
23 judgment about which speech is permissible and
24 which speech is not permissible.

25 THE COURT: I'm only talking about the tape.

1 MR. THOMAS: Your Honor, I'm talking about
2 the tape, too. Your Honor, I don't know if
3 you've taken the time to look at the tape.

4 THE COURT: No. I'm not going to look at
5 the tape. I don't think at this point in time I
6 need to look at the tape.

7 But I will tell you that I had case not too
8 recently that had to do with a man here in town
9 that was allegedly hiring bikini-clad women to go
10 beat up homeless men, and they were recording
11 these sessions, and the men allegedly would
12 receive \$50 at the end of 12 minutes.

13 Well, it was a crime in beating up these
14 disabled people, so the man went to jail. The
15 case ultimately resolved, but there were
16 injunctions. He couldn't be posting those. He
17 was selling those videotapes. He couldn't be
18 selling those videotapes of this crime that was
19 occurring in his garage. And I liken that
20 similar to something that's here.

21 MR. THOMAS: Your Honor, the Michaels case
22 that's talked about by Plaintiff, a sex tape
23 created and copyrighted, and then Michaels 1 was
24 about the sale of that videotape. The Michaels 2
25 case comes along, it's a hard copy, which is a

1 news television program, has a section of the
2 same videotape and text and discussion of the
3 videotape.

4 And the Court, Federal Court, contrary to
5 Michaels 1, says that's permissible when you --
6 when you put speech together with writing, as in
7 the hard copy case and in this case. Your Honor,
8 there is a lengthy article about this that
9 appears in Gawker.

10 Your Honor, the tape, as I understand it, is
11 101 seconds long --

12 THE COURT: That's what your motion says.

13 MR. THOMAS: -- out of 30 minutes. And in
14 that are about nine seconds of something that
15 could be deemed sexual conduct. Your Honor, I
16 think as Judge Whittemore said, that sort of
17 speech in our Constitution is entitled
18 protection.

19 Mr. Bollea says he wants \$100 million. In
20 our system, that's what you do. You litigate the
21 merits. And a jury in this courtroom can make
22 that, and that could remedy the wrong here, Your
23 Honor. The Constitution and prior restraint
24 simply does not permit Your Honor to do that.

25 And here, given the fact that another

1 Federal Judge -- or a Federal Judge has looked at
2 exactly the same issues and made a determination,
3 Your Honor, I think -- does everybody get a
4 second bite at the apple? I don't think so. I
5 think Your Honor would be -- what's the purpose
6 of us having a hearing here today if tomorrow we
7 could go into Federal court and raise the same
8 issues?

9 THE COURT: Well, you know, this same case
10 was filed here on October 15, 2012. So it was
11 filed.

12 MR. THOMAS: Not with these defendants, Your
13 Honor.

14 THE COURT: I don't know. There was a case
15 that was filed here with this same case number on
16 October 15, 2012. I'm not sure who were the
17 parties.

18 MR. THOMAS: Not with these parties, Your
19 Honor, not with the Gawker defendants. The
20 Gawker defendants in Federal court, adjudicated
21 in Federal court. After they dismissed the case
22 in Federal court, Your Honor, they amended the
23 Complaint, I think, in December 25.

24 THE COURT: It was filed December 28.

25 MR. THOMAS: 28. Yeah. So adjudicated,

1 lost, dismissed, amended here and came to Your
2 Honor.

3 Your Honor, the principals of comity where
4 you give deference to other judicial labors I
5 think is critical here, Your Honor. The waste of
6 time and effort by Judge Whittemore would be
7 wasted. So do we all get two shots at the apple?

8 Your Honor, I think when you consider the
9 elements, the four elements required for
10 injunctive relief, is this newsworthy? Hulk
11 Hogan, Your Honor, I think we've mentioned, has
12 written books about his exploits. He is a major,
13 major person. When he does things, he writes
14 about it. When he divorced his wife, he wrote
15 about it. When he did other things, he wrote
16 about it.

17 And now when something is intensely
18 embarrassing, does he get to shut the spicket on
19 news about that matter, that he has an affair
20 with his best friend's wife in the presence of
21 the same person? Your Honor, I think if he opens
22 the spicket in circumstances like this, he can't
23 close it as easily.

24 Your Honor, we think you should deny the
25 Motion for Preliminary Injunction.

1 THE COURT: All right. Thank you.

2 Response, Mr. Harder?

3 MR. HARDER: Thank you, Your Honor. Just
4 briefly. Judge, as I said before, Judge
5 Whittemore's ruling was not on the merits. And
6 Mr. Thomas says that you can't go into one court
7 and ask for injunction and go to another court
8 and ask for injunction. That's not true.

9 I've cited to you cases where someone did go
10 into one court, was denied an injunction in State
11 court, went to Federal court, and the Court did
12 not deny it based on collateral estoppel. The
13 Court in the second case did a full hearing. And
14 that's all we're asking for here, Your Honor, is
15 to -- just to be heard.

16 What Judge Whittemore did is not a waste in
17 any sense because he wrote up an Order. And that
18 Order has case citations and an explanation as to
19 how he viewed the case and how he viewed the
20 issues.

21 That doesn't mean that you have to be a
22 rubber stamp, Your Honor. You, as you are fully
23 aware, I'm sure, can make your own decisions, and
24 we assume that you will do so.

25 Collateral estoppel, however, does not apply

1 here. You are not forced to adopt Judge
2 Whittemore's ruling. You can rule how you see
3 fit.

4 It's true that we can seek damages, and we
5 are seeking damages, but that's not what an
6 injunction is about. An injunction is about
7 putting a stop to wrongful, illegal criminal
8 conduct that is taking place today. A criminal
9 conduct that we're here about is occurring right
10 now at Gawker.com, this web page, where they will
11 not take this video down.

12 Just to clarify, it's about the video, and
13 it's about the quotations from that video that
14 are in print. If you're not supposed to ever
15 tape someone behind closed doors, you're also --
16 you shouldn't be quoting from what people are
17 saying or the descriptions of what so and so
18 looked like and that so and so's genitals were as
19 X, Y, Z, and I'm going to stop there. That's
20 what is on the website. They go into great
21 length about describing things.

22 From our viewpoint, the description should
23 be taken down, the quotation should be taken
24 down, and definitely the video should be taken
25 down.

1 They talk about 101 seconds isn't very much
2 because the video is 30 minutes long supposedly,
3 although no one has ever seen the full 30
4 minutes.

5 Let's say their encounter lasted three days.
6 Let's say it was a long weekend. Does that mean
7 you can have 30 minutes because the percentage is
8 small?

9 101 seconds is a great deal of time when
10 you're looking at the types of things that we're
11 looking at. There was oral sex. There's
12 intercourse. There's all kinds of -- there's
13 changing of positions. There's climaxing, excuse
14 me, Your Honor. There's all kind of things
15 within that 101 seconds.

16 It's a highlight reel is what it is. They
17 make it sound like it's minor portions of the
18 video. It's a highlight reel. It's ladies and
19 gentlemen, this is all you ever need to see.
20 We've cut it all down to the best stuff.

21 They're making money off of this. That's
22 why they are doing it. The owner of their
23 company -- we've provided the blog entries that
24 he wrote. He brags. He brags about how they
25 made 100 million views because people are going

1 to watch the sex tape. Well, now it's up to
2 4 million because so much time has elapsed. It's
3 still about 5,000 people going every single week
4 to take a look at this.

5 My clients can't move past this. That's why
6 they've asked me to continue this endeavor
7 because they can't move past this with their
8 lives as long as that tape is still showing Mr.
9 Bollea having sex with somebody and people are
10 still going to see it, and they comment about,
11 oh, I just saw it, on Twitter and in interviews
12 and various other places. Once this thing is
13 down, they will begin the process of moving past
14 it, but they can't do that.

15 And they've provided affidavits, Your Honor,
16 and you can read them. I don't want to put words
17 in their mouths, but I think that they are
18 articulate in how they describe what they're
19 having to go through and still having to go
20 through. That's why we're seeking the
21 injunction. If you have any questions, Your
22 Honor, I'm happy to address them.

23 THE COURT: All right. Thank you.

24 MR. THOMAS: Your Honor, briefly can I
25 respond?

1 THE COURT: Well, typically you have the
2 movant, the response, and the rebuttal, and
3 that's it. Is there something that you feel
4 really pressing that's also not in your papers?

5 MR. THOMAS: Your Honor, just the video
6 voyeurism claim. It's not a private cause of
7 action in Florida. It's not permissible to bring
8 it as a private cause of action. In the Barnicki
9 (phonetic) case from the United States Supreme
10 Court --

11 THE COURT: That was in his initial part.

12 MR. THOMAS: Yes, Your Honor.

13 THE COURT: Thank you. All right. The
14 Court is going to grant the temporary injunction,
15 finding that plaintiff will suffer irreparable
16 harm. There is no adequate remedy of law, the
17 likelihood of success on the merits, and that
18 public interest will definitely be served by
19 granting this public and temporary injunction.

20 I'm ordering that the Gawker.com remove the
21 sex tape and all portions and content therein
22 from their websites, including Gawker.com.
23 Ordering to remove the written narrative
24 describing the private sexual encounter,
25 including the quotations from the private sexual

1 encounter from websites and including Gawker.com.

2 I would like to comment that -- perhaps
3 comments on the news aspect of it, I'm not
4 addressing the news aspect of it or the book that
5 Mr. Bollea wrote or any of those other aspects.
6 Simply the language that describes what's on the
7 tape, the tape itself, and the exact quotations
8 that are entailed during the course of the tape.

9 I have more to go. Did you have a question?

10 MR. THOMAS: Your Honor, I'm sorry. I'm
11 just trying to be professional and stand when I'm
12 talking, but I'll wait until you finish.

13 THE COURT: I didn't know if you had a
14 specific point on that particular issue.

15 MR. THOMAS: No, Your Honor.

16 THE COURT: Okay. Also enjoined from
17 posting, publishing, exhibiting, or broadcasting
18 the full length video recording, any portions,
19 clips, still images, audio, or transcripts of the
20 video recording.

21 And ordering the turn over to Mr. Bollea's
22 attorneys all copies of the full length video
23 recording, any portions of any clips, still
24 images, audio, or transcripts of that video
25 recording; and that turn over is to be

1 accomplished within the next 10 business days.

2 No bond will be required.

3 And so, Mr. Thomas, did you want a
4 clarification?

5 MR. THOMAS: Your Honor, they say that we've
6 made millions off of this, but you're not going
7 to require a bond?

8 THE COURT: I think that it was really -- in
9 the paper there's millions that have been
10 watching it. I don't know how much money has
11 been made on it.

12 MR. THOMAS: But, Your Honor, you have to
13 protect us if the injunction is improperly
14 entered so that there is bond money there. I
15 mean, a bond -- if we're making millions off this
16 and you take it down, shouldn't we have some
17 monetary bond?

18 MR. HARDER: Your Honor, we never said they
19 made millions of dollars. The quote is from Nick
20 Denton saying a million people have watched --
21 have gone to Gawker.com.

22 THE COURT: Yeah, now 4.9 some million
23 people.

24 MR. THOMAS: So, Your Honor, if you can
25 monetize it at .10 a piece, that's still a

1 significant amount of money.

2 THE COURT: I'm not going to require a bond.
3 Did you have anything else?

4 MR. THOMAS: Yes, Your Honor. Can we have a
5 stay pending our time to go to the 2nd DCA to
6 seek appellate review of your decision?

7 THE COURT: Do you know of any authority
8 that requires me to stay it?

9 MR. THOMAS: No, Your Honor.

10 THE COURT: Okay. No. Denied. Stay is
11 denied.

12 So, Mr. Harder, would you please prepare
13 that Order for me and send it to me. Do you know
14 how long it will take you to prepare that?

15 MR. HARDER: I would expect that we would
16 get that in to you hopefully tomorrow or the next
17 day, as soon as we possibly can.

18 THE COURT: Okay. Thank you. Anything else
19 for today?

20 MR. THOMAS: Thank you, Your Honor.

21 THE COURT: All right. Thank you very much.
22 (Thereupon, a discussion was held off the
23 record.)

24 THE COURT: Additionally on the record, Mr.
25 Keith Thomas had called our office, was not able

1 to be here today. He represents Ms. Clem and has
2 no objection to the entry of an injunction.

3 Thank you.

4 (Thereupon, the proceedings were concluded.)

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1 CERTIFICATE OF REPORTER

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3

4 STATE OF FLORIDA)
) ss
5 COUNTY OF PASCO)

6 I, Stacy D. Miller, Court Reporter, certify that
7 I was authorized to and did stenographically report
8 the foregoing proceedings and that the transcript is a
9 true record thereof.

10 I further certify that I am not a relative,
11 employee, attorney, or counsel of any of the parties,
12 nor am I a relative or employee of any of the parties'
13 attorneys or counsel connected with the action, nor am
14 I financially interested in the action.

15 DATED this 24 day of April, 2013.

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STACY D. MILLER, Court Reporter

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